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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,384	12/19/2001	Gerald James Keberlein	KCX-472 (17476)	5212

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EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,384

Applicant(s)

KEBERLEIN, GERALD JAMES

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 5, 8, 11-17 and 19-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 8, 11-17, and 19-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

At the outset, applicant should note that the amendment originally presented in November 05, 2003 fails to properly identify claims 31-38 as "previously presented". Note that these claims were newly presented in the amendment filed in March 25, 2003. Appropriate steps should be taken to ensure that these claims are properly referred to in the future so as to avoid a holding of non-response because of improper amendment format.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 33, 35, and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. With respect to claims 33, 35, and 38, the recitation of "the first outer side wall and the first inner side wall which are not secured to each other" and "the second outer side wall and the second inner side wall which are not secured to each other" are considered new matter because there is no support in the original disclosure of what is being claimed. In particular, it should be noted that Figure 2 illustrates the respective outer sidewalls (22 or 28) are connected to the respective inner sidewalls (27 and 29). Moreover, the drawings, e.g., see Figure 4,

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show a bead of adhesive ('38) that meanders into portions of the outer side wall (28) that overlaps the inner side wall (29) within the area bounded by the arch line and there areas without the adhesive bead outside the arch line. Accordingly, it is not known how the arch line defines a dividing line between secured portions and unsecured portions. The passage pointed out by applicant offers no further insight.

Claims 33 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 33, and 38, the claims appear to be misdescriptive and/or inaccurate because the arch dividing lines (36, 37) does not locate between the respective outer sidewall and inner sidewall. It appears that "outer side wall" should be changed to --flap--. Note that the outer sidewall has been defined as the wall connecting between with the inner sidewall and a bottom (26).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 10, 11, 19, and 31-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Lane. Lane discloses a carton tray that meets all limitations of the claims. For example, the carton tray of Lane comprising a one piece blank foldable into a carton tray. The tray has a bottom wall panel (3) including access notches (14) for holding down the tabs, the bottom wall panel (3) is connected to the respective first and

second sidewalls (left side and right side of the tray). The first wall comprises a first outer sidewall (4) and a first inner sidewall (5) and a second wall comprises a second outer sidewall (4) and a second inner sidewall (5). The bottom wall panel is attached between the first and second outer sidewalls (4) at the first and second edges (2), a respective first and second inner sidewalls (5) connected to the respective first and second outer sidewalls (4) at the third and fourth edges and connected to the respective first and second flaps (11) at the fifth and sixth edges (10). The respective first inner side wall (5) is extending from the first outer side wall (4) and over at least a portion of the first outer side wall (4). See Figure 2. The respective flaps (11) having a perforation line (8) that is cutout to define an arch (17) and a tab thereof, wherein the perforation line cutout and the arch are located on the respective inner sidewalls. See Figure 1. The flaps are secured to the bottom wall panel and wherein the first sidewall and the second sidewall are canted towards each other in a relaxed position, as shows in Figure 2, without supporting any item on the tray.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane as applied to claims 1, 2, 5, 10, 11, 19, and 31-38 above, and further in view of Gambardella et al. Gambardella et al. teach the adhesive (58) on the blank carton. It

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would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carton of Lane with the provision of adhesive as taught by Gambardella et al. in order to glue two walls together.

Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane as applied to claims 1, 2, 5, 10, 11, 19, and 31-38 above, and further in view of R. B. Meller. Meller teaches the first and second sidewalls (9) are in a relaxed position and in a tensioned position upon an item is inserted therebetween on the tray. See Figures 3 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to utilize a flexible blank material to construct a tray therewith as taught Meller in order to enable the tray to automatically lock and hold the individual item of the merchandise against accidental displacement or removal.

Claims 13-16, 21-27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane in view of R. B. Meller as applied to claims 1, 2, 5, 8, 10-12, 19, and 31-38 above, and further in view of Allan H. Miller. Miller teaches the tray supports tissue napkin (21) and a removable outer protective wrap (26) that configured to encase and surround the tray. See Figures 1, and 7. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to utilize the tray of Lane to support tissue napkin and food product with a protective wrap enclosing the tray as taught by Miller in order to keep the item that is supported on the tray from nature contamination. With respect to claim 15, it would have been an obvious matter of choice of design at the time of the invention to provide sidewalls with decorative motif for aesthetic purpose thus producing no new matter and unexpected results.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane in view of R. B. Meller and Allan H. Miller as applied to claims 1, 2, 5, 8, 10-14, 16, 19, 21-27, and 29-38 above, and further in view of Gambardella et al. Gambardella et al. teach the adhesive (58) on the blank carton. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carton of Lane with the provision of adhesive as taught by Gambardella et al. in order to glue two walls together.

Response to Amendment

Applicant's arguments filed on January 12, 2004 have been fully considered but they are not deemed to be persuasive.

With respect to applicant's argument to the rejection under 35 U.S.C. 112, first paragraph, it should be noted that the first arch 36 and the second arch 37 indicated by applicant does not connect to the first outer side wall since the claim, see claim 1, and the specification defined the outer side wall as the member (28) and member (22) that connected to the inner side wall members (27 and 29).

With respect to applicant's argument to the rejection under 35 U.S.C. 112, second paragraph, that Figure 7 clearly shows the dividing line of the first arch is between the inner side wall and outer side wall, the examiner respectfully disagrees. It should be noted that the claim, see claim 1, and the specification clearly defined members 28 and 27 as the outer sidewalls and it appears applicant's attempt to set forth the flap member (30a, 30b) as the outer sidewall, this is clearly incorrect and not supportive. If applicant's still disagree with the rejection, applicant is respectfully

request to point out the reference numeral of the arch dividing line that applicant considers as the arch dividing line locates between the inner and outer side walls.

With respect to applicant's argument to Lane failing to teach or suggest "the first inner side wall extending from the first outer side wall over at least a portion of the first outer side wall", the examiner respectfully disagrees. It should be noted that the first inner side wall of Lane is extending from the first outer side wall and over the top portion of the at least portion of the first outer side wall. See figure 2. Further, it should be noted that the first outer side wall of Lane is adjacently secured to the first inner side wall that shown in Figure 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 20, 2004

Khoa Tran

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Alvin Chin-Shue
Primary Examiner